

ARCHAEOLOGICAL RESOURCES PROTECTION ACT OF 1979

Acronym: ARPA

Citation: 16 U.S.C. §§ 470aa-470mm (2002).

Legislative Purpose:

The Archaeological Resources Protection Act expands the protections provided by the Antiquities Act of 1906 in protecting archaeological resources and sites located on public and Indian lands.

Summary:

The United States passed the Archaeological Resources Protection Act of 1979 to regulate finds on federal and Indian lands and to prevent looting and destruction of archeological resources.

ARPA encompasses a great variety of objects, not just historic sites like the Antiquities Act. ARPA defines "archaeological resources" as items: (1) of archaeological interest over 100 years old; and (2) found in an archaeological context on federal or Indian lands and requires finders to obtain a federal permit before excavating these objects. ARPA's permitting component authorizes the recovery of certain artifacts consistent with the standards and requirements of the Federal Archaeology Program.

Like the Antiquities Act, ARPA has both a permitting and an enforcement component. The enforcement provisions provide for the imposition of both criminal and civil penalties against violators of the act. While ARPA is applicable to the marine environment, its reach in this context is limited. Pursuant to the express language of the act itself, ARPA can only be applied to such areas as national parks (with federally-owned submerged lands) and wildlife refuges. Additionally, ARPA specifically states that it does *not* apply to activities occurring on the outer continental shelf.

TITLE 16. CONSERVATION

CHAPTER 1B. ARCHAEOLOGICAL RESOURCES PROTECTION

16 U.S.C. §§ 470aa-470mm (2002).

§ 470aa. Findings and purpose

(a) The Congress finds that--

- (1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;
- (2) these resources are increasingly endangered because of their commercial attractiveness;
- (3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and
- (4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act [Oct. 31, 1979].

§ 470bb. Definitions

As used in this Act--

- (1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.
- (2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which

no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means--

(A) lands which are owned and administered by the United States as part of--

- (i) the national park system,
- (ii) the national wildlife refuge system, or
- (iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688) [[43 USC §§ 1601](#) et seq.].

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

§ 470cc. Excavation and removal

(a) Application for permit. Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) Determination by Federal land manager prerequisite to issuance of permit. A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that--

- (1) the applicant is qualified, to carry out the permitted activity,
- (2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,
- (3) the archaeological resources which are excavated or removed from public lands will remain the

property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other specific or educational institution, and
(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) Notification to Indian tribes of possible harm to or destruction of sites having religious or cultural importance. If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 [[16 USC § 470hh](#)].

(d) Terms and conditions of permit. Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Identification of individuals responsible for complying with permit terms and conditions and other applicable law. Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Suspension or revocation of permits; grounds. Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6 [[16 USC § 470ee](#)(a), (b), or (c)]. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 [[16 USC § 470ff](#)] against the permittee or upon the permittee's conviction under section 6 [[16 USC § 470ee](#)].

(g) Excavation or removal by Indian tribes or tribe members; excavation or removal of resources located on Indian lands.

(1) No permit shall be required under this section or under the Act of June 8, 1906 ([16 U.S.C. 431](#)), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavations or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h) Permits issued under Antiques Act of 1906.

(1) No permit or other permission shall be required under the Act of June 8, 1906 ([16 U.S.C. 431-433](#)), for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906 [[16 USC §§ 431-433](#)], shall remain in effect according to its terms and conditions following the enactment of this Act [Oct. 31, 1979]. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906 [[16 USC §§ 431-433](#)], before the date of the enactment of this Act [Oct. 31, 1979] which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Compliance with provisions relating to undertaking on property listed in the National Register not required. Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, [16 U.S.C. 470f](#)).

(j) Issuance of permits to State Governors for archaeological activities on behalf of States or their educational institutions. Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

§ 470ee. Prohibited acts and criminal penalties

(a) Unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources. No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4 [[16 USC § 470cc](#)], a permit referred to in section 4(h)(2) [[16 USC § 470cc\(h\)\(2\)](#)], or the exemption contained in section 4(g)(1) [[16 USC § 470cc\(g\)\(1\)](#)].

(b) Trafficking in archaeological resources the excavation or removal of which was wrongful under Federal law. No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of--

(1) the prohibition contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) Trafficking in interstate or foreign commerce in archaeological resources the excavation, removal, sale, purchase, exchange, transportation or receipt of which was wrongful under State or local law. No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged,

transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.

(d) Penalties. Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than \$ 10,000 or imprisoned not more than one year, or both: Provided, however, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of \$ 500, such person shall be fined not more than \$ 20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than \$ 100,000, or imprisoned not more than five years, or both.

(e) Effective date. The prohibitions contained in this section shall take effect on the date of the enactment of this Act [Oct. 31, 1979].

(f) Prospective application. Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act [Oct. 31, 1979].

(g) Removal of arrowheads located on ground surface. Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

§ 470ff. Civil penalties

(a) Assessment by the Federal land manager.

(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors--

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resources and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and

archaeological sites damaged and double the fair market value of resources destroyed or not recovered.
(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b) Judicial review of assessed penalties; collection of unpaid assessments.

(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty--

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings. Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

§ 470gg. Enforcement

(a) Rewards. Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under sections 6 and 7 [[16 USC §§ 470ee](#) and 470ff] an amount equal to one-half of such penalty or fine, but not to exceed \$ 500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect

to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) Forfeitures. All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 [[16 USC § 470ee](#)](a), (b), or (c)] occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon--

- (1) such person's conviction of such violation under section 6 [[16 USC § 470ee](#)],
- (2) assessment of a civil penalty against such person under section 7 [[16 USC § 470ff](#)] with respect to such violation, or
- (3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) Disposition of penalties collected and items forfeited in cases involving archaeological resources excavated or removed from Indian lands. In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 [[16 USC § 470ee](#)](a), (b), or (c)] involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 [[16 USC § 470ff](#)] and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

§ 470hh. Confidentiality of information concerning nature and location of archaeological resources

(a) Disclosure of information. Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code [[5 USC §§ 551](#) et seq.] or under any other provision of law unless the Federal land manager concerned determines that such disclosure would--

- (1) further the purposes of this Act or the Act of June 27, 1960 ([16 U.S.C. 469](#)-469c), and
- (2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Request for disclosure by Governors. Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state--

- (1) the specific site or area for which information is sought,
- (2) the purpose for which such information is sought,
- (3) a commitment by the Governor to adequately protect the confidentiality of such information to protect

the resource from commercial exploitation, the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

§ 470ii. Rules and regulations; intergovernmental coordination

(a) Promulgation; effective date. The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; [42 U.S.C. 1996](#)). Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Natural Resources of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Federal land manager rules. Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

(c) Federal land managers' public awareness program of archaeological resources on public lands and Indian lands. Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources.

§ 470jj. Cooperation with private individuals

The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between--

- (1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act [Oct. 31, 1979], and
- (2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

§ 470kk. Savings provisions

(a) Mining, mineral leasing, reclamation, and other multiple uses. Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Private collections. Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Lands within Act. Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

§ 470ll. Annual report to Congress.

As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; [16 U.S.C. 469-469a](#)), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act [[16 USC § 470jj](#)], relating to cooperation with private individuals.

§ 470mm. Surveying of lands; reporting of violations

The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall--

(a) develop plans for surveying lands under their control to determine the nature and extent of archeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archeological resources; and

(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.